IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 4509 (M/S) of 2001

State of Uttar Pradesh through Collector, Nainital. ....Petitioner.

Vs

1. The Special Judge/Additional District Judge, Nainital.
2. The Prescribed Authority/S.D.O. Khatima,
   District- Nainital.
3. Smt. Harnam Kaur D/o Sri Amardas and W/o Sri Goverdhan Lal Kapoor.
4. Smt. Chandrani W/o Sri Amardas Matta.
   Both residents of F-441, New Rajendra Nagar,
   New Delhi. ....Respondents

Sri Gopal Narain Srivastava, learned brief holder for the State.

Hon'ble B.S. Verma , J.

Heard Sri Gopal Narain Srivastava, learned brief holder for the State.

Learned counsel appearing for the State made a statement at bar that a letter has already been written to the Authority concerned to furnish the name of legal heirs of respondent Nos. 3 and 4 but no information has been received till today and the proceedings being writ petition are not abated.

The present writ petition has been filed by the petitioner to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 21-12-1982 (Annexure No.5) passed by the learned Additional District Judge, Nainital.

Brief facts giving rise to the present writ petition are that the land of the respondent Nos. 3 and 4 was declared surplus vide order

dated 26-3-1982 and the land measuring 38 bighas 12 biswas of Village Bagulia. Thereafter, the petitioner preferred an appeal against the judgment and order dated 26-3-1982 passed by the Prescribed Authority (Ceiling) Khatima in Ceiling case No.51/8 of 1978-79 and also made a prayer to hold the land measuring 38 bighas 12 biswas in terms of irrigation land as declared surplus land. Notice under Section 10 (2) of the Ceiling Act had been issued to the tenure holder Amar Das. He filed the objections before the Prescribed Authority and contested the notice. The main allegations was that Plot No. 11 and 12 Min of Village Bagulia have wrongly been shown as irrigated.

He further contended that the Plot Nos. 54 Min, 59 Min, 60 Min, 64 Min, 65 Min, 69 Min, 72 Min, 73 Min, 76 Min, 77 Min, 80 Min, 81 Min and 85 Min of Village Damagara have also wrongly been shown as irrigated. Not only this, the plot Nos. 3,4,7, Min 8, Min 11, 12 Min, 15 Min, 17 Min, 18 Min, 19 Min, 45 Min and 46 Min, of Village Khalimahutat have also wrongly been shown as irrigated. The Prescribed Authority held that the land of the tenure holder is irrigated. A spot inspection was also made by the Prescribed Authority on 12-3-1982. Ultimately, by the judgment and order dated 26-3-1982, the land measuring 38 bighas 12 biswas in terms of irrigated land has been declared as surplus in the holding of the tenure holder.

After the reappraisal of the evidence, learned appellate Court came to the conclusion that the land measuring 24 bighas 01 biswansi is irrigated land instead of 38 bighas 12 biswas, which was declared by the Prescribed Authority.

The appeal was allowed in part and the parties were directed to appear before the Prescribed Authority. The Prescribed Authority shall give an opportunity to the tenure-holder to signify their choice and would then declared the above surplus area out of the holding of the tenure holder.

The question whether the land of tenure holder was irrigated at the time of issuance of the notice under Section 10 (2) of the Act is a finding of fact and has been dealt with by the appellate court no the basis of evidence available on record.

The finding of fact cannot be re-appreciated in the writ petition and the learned counsel appearing for the State has failed to establish the order is perverse and manifestly erroneous.

In view of the above, I do not find any perversity or infirmity in the impugned orders. The writ petition is dismissed on merit. No order as to costs.

All applications stands disposed of accordingly.

(B.S.Verma,J)

Dated: -4-5-2007
M.K.